

AIR SERVICE AGREEMENT

This Air Service Agreement (this "Agreement") is made and entered into as of [REDACTED], 2012 (the "Effective Date") between [REDACTED], a [REDACTED] corporation with its principal offices at 233 South Wacker Drive, Chicago, Illinois "(United)" and City of Columbia, Missouri (the "Guarantor"), with its principal offices at 701 E Broadway, Columbia, Missouri 65205.

1. Term.

This Agreement shall commence on the Effective Date and, unless sooner terminated in the manner provided for herein, shall remain in full force and effect until the end of the Air Service Period as described in Section 2.

2. Air Service.

United shall provide regularly scheduled passenger air service between Chicago O'Hare International Airport ("ORD") and Columbia Regional Airport ("COU") in both directions (the "Air Service"), with a published schedule that supports a first travel date of [REDACTED], 2012 (the "Commencement Date") and continuing through [REDACTED], 2014 (the "Air Service Period") in accordance with the schedule attached hereto as Schedule 2.

United reserves the right to make all operational decisions regarding the Air Service, including, but not limited to, aircraft type and configuration, timing of arrival/departure, frequency of service, and continued operation of the Air Service. Guarantor acknowledges that due to operating conditions, United may be required to publish available seating levels that are below total aircraft seating capacity due to weather or other conditions.

3. Minimum Revenue Requirement.

- a. The "Segment Charge" shall be specified in Schedule 2. A "Segment" shall be a flight between COU and ORD.
- b. The "Settlement Period" shall be a calendar Quarter beginning on [REDACTED], 2012.
- c. The "Minimum Revenue Requirement" shall mean the Segment Charge as set forth in Schedule 2 for each Segment multiplied by the actual number of Segments operated by United during the Settlement Period.
- d. United and Guarantor agree that the Total Revenue (as defined in Section 4.c below) for each Settlement Period must equal or exceed the Minimum Revenue Requirement, subject to the provisions of this Agreement.

4. Revenue Calculation.

- a. United and Guarantor agree that in the event of certain changes in the average price per gallon that United pays for jet fuel the Segment Charge for Segments during any period such changes are in effect shall be adjusted as provided in Schedule 1 hereto.
- b. For purposes of this Agreement, "Net Segment On-Board Revenue" for each Segment shall be the total amount paid by passengers in connection with the applicable Air Service Flight, less applicable taxes paid by passengers as a part of the price of their ticket, and shall be rate-prorated by segment. A rate-prorate is used to divide total on-board revenue paid per Segment among the actual number of Segments flown by an Air Service passenger according to the ratio of each Segment's local fare to the sum of all the local fares applicable to the passenger's actual itinerary.
- c. For purposes of this Agreement, "Total Revenue" shall be the sum of the Net Segment On-Board Revenues for all of the Segments operated by United during each Settlement Period plus ancillary revenue associated with these segments.
- d. United's internal revenue accounting system shall be the sole source of information for calculating Net Segment On-Board Revenue and Total Revenue. Notwithstanding the foregoing, Guarantor shall have the right, upon providing at least five (5) business days prior written notice to United, to conduct, at Guarantor's sole expense, an audit, within sixty (60) days, following the receipt of the invoice referenced in Sections 5 & 6. Such audit may examine the information and documents used to calculate Net Segment On-Board Revenue received by United for Air Service Flights associated with this Agreement. Any such audit must be reasonable in all respects, and must be performed during regular business hours and without affecting United's regular business operations.

5. Revenue Reconciliation.

- a. United will reconcile the Total Revenue, during each Settlement Period, against the Minimum Revenue Requirement for such Settlement Period. United shall provide the reconciliation to Guarantor and no later than the last business day of the calendar month following the end of the Settlement Period.
- b. If the Total Revenue is more than the Minimum Revenue Requirement for such Settlement Period, a "Revenue Excess" shall be deemed to have occurred. In such event, United will retain the Revenue Excess. In any event, Guarantor will be able to apply the Revenue Excess amount to any financial obligations to United during the term of the Agreement.
- c. If the Total Revenue is less than the Minimum Revenue Requirement for such Settlement Period, a "Revenue Shortfall" shall be deemed to have occurred. In such event, United will invoice the Guarantor for the Revenue Shortfall.

6. Payments by Guarantor.

Guarantor hereby agrees to pay to United all Revenue Shortfalls that occur during the term

of this Agreement. Guarantor's agreement is limited to the sum of no more than one million five hundred thousand dollars (\$1,500,000) for the period [REDACTED], 2012, through [REDACTED], 2013 and one million five hundred thousand dollars (\$1,500,000) for the period [REDACTED], 2013 through [REDACTED], 2014. Guarantor shall make the payments required in this Section 6 within 30 days following the receipt of an invoice from United. United shall not submit invoices to Guarantor more frequently than quarterly. The payments required hereunder shall be made via check or wire transfer pursuant to wiring instructions given by United or by other means of payment agreed to in writing by United. Guarantor further agrees to reimburse United up to a maximum of \$5,000 for expenses associated with startup of operations at COU, including, but not limited to, signage, build-out, furnishings, office equipment and IT installation. The payments set forth in the preceding sentence shall be made within 30 days after the receipt of an invoice from United itemizing the expenditure of such amounts.

7. Flight Information Reporting.

United shall provide weekly updates of advance bookings beginning two months before the start of service to allow Columbia to track market performance and to target marketing efforts. United shall provide a report of flights operated, load factors, revenue earned, and calculated revenue shortfall or revenue excess to Guarantor, and to the City, on a monthly basis.

8. Termination and Default.

This Agreement may be terminated by the party specified below (after having given any applicable notice specified below) upon the happening of any of the following events:

- a. By United, if (i) United is unable to obtain the governmental or other approvals necessary to begin the Air Service; (ii) Guarantor fails to make any payment when due and does not make such payment within twenty (20) days after written notice or demand thereof; or (iii) any of the following events occur: (A) a forced or voluntary grounding of one or more of United' aircraft types or (B) a greater than 35% increase in the average price per gallon that United pays for jet fuel as compared to the average price per gallon that United paid as of the Effective Date.
- b. By United or by the Guarantor, if the other party is in breach or default under any provision of this Agreement and such other party does not cure such breach or default within twenty (20) days after the non-breaching or non-defaulting party gives written notice to the other party specifying the breach or default.
- c. By either party with or without cause or penalty upon not less than ninety (90) days prior written notice to the other party. The effective date of termination shall be as stated in such written notice of termination but not earlier than ninety (90) days following such written notice.

9. Remedies Upon Termination.

- a. A termination pursuant to Section 8.b shall not limit the non-breaching or non-defaulting party's right to pursue or enforce any of its rights under this Agreement or otherwise.
- b. Any termination or expiration of this Agreement shall not affect The Guarantor's obligation to pay United all amounts owing to United as of the effective date of such expiration or termination.
- c. In the event of any termination or expiration of this Agreement for any reason, the Guarantor shall pay all amounts owed to United, as of the effective date of expiration or termination, in accordance with the provisions of this Agreement, within ten (10) business days after receipt of an invoice from United.

10. Confidential Information.

The parties recognize that Guarantor has obligations under the Missouri Sunshine Law, Section 610.010, et seq. RSMo. to disclose public records. United agrees that records that the City receives from United shall be considered open public records unless United notifies City that the records are considered confidential and cites the legitimate statutory authority under which the records are closed.

11. Promotional Materials.

Guarantor shall conduct a local advertising campaign to promote the availability of United's air service. The value of this advertising shall be no less than \$200,000. Guarantor shall submit to United c/o (insert title and address) for review and approval, prior to publication or use, the portion of any and all artwork, scripts, copy, advertising, promotional materials, direct mail, press releases, newsletters or other communications or any other publicity published or distributed by Guarantor (or at its direction or authorization) that specifically references this Agreement, United (or any of United's Affiliates), or uses any trademark, service mark, logo or trade name of United or any of its Affiliates (collectively, the "Promotional Materials"). All such Promotional Materials shall follow at a minimum the Corporate Graphics Standards available from United. United shall have the right, at its sole discretion, to modify the graphics standards and disclaimers from time to time. For the purpose of this Agreement, "Affiliate" shall mean, with respect to either party, any person directly or indirectly controlling, controlled by, or under common control with, such party.

12. Fares and Inventory Management.

United agrees to establish and modify, as needed, the air fares for the Air Service and agrees to provide yield and inventory management services with respect thereto. United hereby disclaims all liability for, and the City and Guarantor hereby waive all claims against United which may arise out of or in connection with, the establishment or modification of such air fares or the yield and revenue management services provided hereunder. United shall at all times have the unconditional right in its sole discretion to determine air fares and to manage seat inventory during the Air Service Period.

13. Governing Law.

This Agreement shall be construed in accordance with, and shall be governed by, the laws of the State of Missouri without regard to any conflict of law rules.

14. Jurisdiction.

Each party irrevocably submits to the nonexclusive jurisdiction of the United States District Court for the Western District of Missouri and the Circuit Court of Boone County, Missouri, for purposes of legal proceedings arising out of this Agreement or any transactions contemplated in this Agreement. Each party, to the fullest extent it may effectively do so under substantive governing law applicable to this Agreement, also irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court and any objection that it may have as to venue or inconvenient forum in respect of claims or actions brought in such court and any right of application or appeal to any court (in the U.S. or in any other jurisdiction).

15. Reserved.

16. Force Majeure.

Except as otherwise expressly provided in this Agreement, neither party shall be liable for performance hereunder to the extent such performance is prevented or delayed as a result of acts of God, severe weather, natural disaster, earthquake, fire, war, military action, terrorist action, labor disputes, or any court order or action of any governmental, administrative or judicial entity or by any other reason or circumstance, similar or dissimilar, beyond the reasonable control of such party; provided, however, such party shall (a) provide the other party with prompt written notice thereof, and (b) resume performance under the Agreement within fourteen (14) calendar days of the first non-performance. If either of the parties is unable to perform under the Agreement within fourteen (14) days of the first non-performance under this Section 16, then either party may terminate this Agreement.

17. Indemnification.

- a. United agrees to indemnify, defend and hold harmless the Guarantor and its officers, directors, employees and agents (the "Guarantor Indemnified Parties") from and against any and all third party liabilities, damages, losses, claims, suits, liens, demands, actions, causes of action, judgments, fines, penalties and expenses (including without limitation reasonable attorneys' fees) of any nature whatsoever (collectively, "Claims") arising out of or in connection with, or related to (i) the willful misconduct or negligent acts, errors or omissions of United, its subcontractors, its affiliates or any person directly or indirectly employed by United, or any of them, while engaged in any activity associated with or related to United' performance under this Agreement; (ii) United' products or services supplied or performed in connection with this Agreement or otherwise; and (iii) United' breach of its obligations under this Agreement.
- b. Guarantor agrees to indemnify, defend and hold harmless United and its officers, directors, employees, agents and affiliates (the "United Indemnified Parties") from and against any and all Claims arising out of or in connection with, or related to (i)

the willful misconduct or negligent acts, errors or omissions of Guarantor, its subcontractors, its affiliates or any person directly or indirectly employed by Guarantor, or any of them, while engaged in any activity associated with or related to Guarantor's performance under this Agreement; and (ii) Guarantor's breach of its obligations under this Agreement.

- c. The rights and obligations of the parties under this Section 17 shall survive any termination or expiration of this Agreement.

18. Waiver of Consequential Damages.

Except with respect to each party's indemnification obligations hereunder, no party shall be liable to any other for any special, incidental or consequential damages or lost profits arising out of this Agreement, even if such party had been advised of the possibility of such damages.

19. Insurance.

At all times during the term of this Agreement, United shall carry and maintain, at its sole cost and expense, airline liability insurance with aggregate limits of at least \$50,000,000 USD for personal injury (including without limitation bodily injury and death) and property damage. If so requested by the Guarantor, United will furnish the requestor, within thirty (30) days of such request, an insurance certificate.

20. Assignment.

No party may assign this Agreement or any interest herein without obtaining the prior written consent of the other parties, except that United may assign or delegate this Agreement and the rights and obligations created hereunder to any wholly owned subsidiary of United without the consent of Guarantor.

21. Waivers and Modifications.

This Agreement embodies the entire agreement and understanding of the parties and, as of its effective date, terminates and supersedes all prior or contemporaneous agreements and understandings, whether written or oral, between the parties covering the subject matter hereof. The provisions of this Agreement shall govern all services to be provided hereunder by the parties, and no addition, amendment, waiver, or modification of (or execution of any document contrary to) these provisions shall be effective unless signed by a duly authorized representative of all parties.

22. Severability.

If any one or more of the provisions of this Agreement shall be determined to be invalid, unenforceable or illegal, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal and unenforceable provision had never been contained herein with the remainder of this Agreement being enforced to the fullest extent possible.

23. Relationship of the Parties.

For the purposes of this Agreement each of the parties is an independent contractor, and no party shall be deemed to be the agent, partner, employee or joint venture of any other party.

24. Notices.

Any notice required to be given by any party to any other pursuant to this Agreement shall be in writing and shall be deemed to have been properly given if delivered in person, transmitted by facsimile, sent by overnight delivery or sent by registered or certified mail, return receipt requested, addressed to the other party at the following address, and shall be deemed to have been given on the day so delivered, transmitted or mailed:

To United:

Attn: XXX
233 South Wacker Drive
Chicago, Illinois 60606
Fax No.:

To Guarantor:

City of Columbia, Missouri
Attn: Airport Manager
11300 South Airport Drive
Columbia, Missouri 65205
Fax No.:

Any party will have the right to change their representative and address for notice to any other location by giving at least five (5) business days' prior written notice to the other party in the manner set forth above.

25. Headings/Construction.

The headings contained herein are for convenience of reference and are not intended to define or limit the scope of any provision of this Agreement.

26. Successors and Assigns; No Third Party Beneficiaries.

This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns and there is no intent to benefit any third parties.

27. Further Assurances.

Each of the parties shall do and perform, at such party's expense, such further acts and execute and deliver such further instruments and documents as may be required by applicable law or as may be reasonably requested by the other party to effectuate the purposes of this Agreement.

28. Exhibits & Schedules.

The Exhibits and Schedules to this Agreement are incorporated into this Agreement and form a part hereof for all intents and purposes.

29. No Waiver.

No waiver of a breach of any provision of this Agreement by any party shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing and signed by a duly authorized representative of the waiving party. Except as expressly set forth herein, no delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

30. No Remedy Exclusive.

Except as expressly set forth herein, no remedy herein conferred upon or reserved to a party herein is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. In order to entitle a party to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice other than such notice as may be herein expressly required.

31. Expenses.

Unless otherwise specified in this Agreement, each party to this Agreement agrees to be responsible for its own costs, expenses and charges (including, without limitation, legal fees, advisory fees and accounting fees) in connection with the preparation of this Agreement and the transactions contemplated hereunder.

32. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, and which together shall constitute one instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the date first above written.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Fred Boeckmann, City Counselor

CERTIFICATION: I hereby certify that this contract is within the purpose of the appropriation to which it is to be charged, Account No. _____, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

John Blattel, Director of Finance

United

By: _____

Name: _____

Title: _____

**SCHEDULE 1
TO AIR SERVICE AGREEMENT
BETWEEN UNITED AIRLINES, INC. AND
GUARANTOR
FUEL ADJUSTMENTS**

1. United has determined the Segment Charge based upon jet fuel costs of **US\$3.50** per gallon ("Average Fuel Price"). If the actual average price per gallon that United pays for jet fuel (calculated as the average of United' system fuel price, inclusive of hedge effect) to service the Air Service Flight ("Actual Average Fuel Price") for any calendar month during the Air Service Period (each an "Air Service Month") changes, United will adjust the amount payable by Guarantor for such Air Service Month and will provide to Guarantor a summary for such Air Service Month indicating the adjustment as follows (each a "Fuel Adjustment"):
 - a. If the Actual Average Fuel Price for an Air Service Month is greater than **US\$3.50**, Guarantor will be charged **\$5.50** per each Air Service Flight for each \$0.01 in Average Fuel Price over **\$3.50**.
 - b. If the Actual Average Fuel Price is less than **US\$3.50** ("Lower Fuel Price") during the Air Service Month Guarantor will be credited **\$5.50** per each Air Service Flight for each \$0.01 in Average Fuel Price under **\$3.50**.

**SCHEDULE 2
TO AIR SERVICE AGREEMENT
BETWEEN UNITED AND
GUARANTOR
AIR SERVICE FROM COLUMBIA TO CHICAGO O'HARE**

PROPOSED FLIGHT SCHEDULE*

Round-Trip A

Origin	Destination	Days of Operation	Flight Times
COU	ORD	Daily	XXXX-XXXX
ORD	COU	Daily	XXXX-XXXX
COU	ORD	Daily	XXXX-XXXX
ORD	COU	Daily	XXXX-XXXX
COU	ORD	Daily	XXXX-XXXX
ORD	COU	Daily	XXXX-XXXX

Equipment: ERJ**

Present Configuration: 50 seats**

Segment Charge (Directional): Four Thousand Seventy Four Dollars and Ninety Two Cents (\$4,074.92) USD one-way or Eight Thousand One Hundred Forty Nine Dollars and Eighty Four Cents (\$8,149.84) USD roundtrip.

*Exact operating times are subject to change from time to time by United at its sole discretion.

**Subject to Section 2.